IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3634 OF 1999

Maharashtra State Market Committee
Cooperative Federation Ltd & anr .. Petitioners

versus

The Secretary, Food,Civil Supplies
& Consumer Protection Department & ors
.. Respondents

Mr.L.D.Vakil, i/b Mr.Ramesh D.Soni for Petitioners

Ms.P.S.Cardozo, Assistant Government Pleader for
for Respondent nos. 1 to 4.

CORAM : S.B.MHASE AND
D.G.KARNIK, JJ

DATED : 12th January, 2006

ORAL JUDGMENT (Per D.G.Karnik, J)

1. Heard learned counsel for the petitioners and learned Assistant Government Pleader for the respondents.

2. By this petition, the petitioners challenge the communication dated 20th April, 1999 issued by the Secretary, Food and Civil Supplies Department of the State of Maharashtra directing the petitioner no.1-Market Committee to suspend the

levy of a fee on the sale/purchase of agricultural produce sold in fair price shops situated within the local limits of the petitioner no.1-Market Committee.

3. The Maharashtra Agricultural Produce Marketing Regulation Act, 1963 (for short the Act) was enacted by the legislature of Maharashtra for the purpose of regulating the marketing of agricultural and certain other produce in the market areas to be established therefore in the State and to confer upon the market committees to be constituted for the purpose and to establish a market fund for the purposes of market committees and to provide for other connected matters therewith.

4. In accordance with the provisions of the Act different market committees have been established and are levying the market fee from the purchasers of the agricultural produce and other specified produce in the schedule of the Act sold and purchased by the purchasers within their local areas. The petitioner no. 1 is a federation of the market comittees. Many fair price shops popularly known as ration shops - are situated in the local limits of the various market committees, which have been levying and recovering market fees

and supervision charges on the notified agricultural produce sold in the said fair price shops. The levy is made in accordance with section 31 of the Act. It appears that the issue of grant of exemption from recovery of the market fee and supervision charges on the foodgrains sold in the fair price shops situate in the market areas was under consideration of the government in the year 1999. However, no final decision was taken by the government and no exemption was granted under section 59 of the Act. Pending consideration of the matter of grant of exemption under section 59 of the Act to the fair price shops by the impugned letter dated 20th April, 1999 all the Additional Collectors in the State were informed that all the market committees in the State had been directed to suspend the recovery of the market cess and supervision charges on the food grains sold on ration in the fair price shops. The Additional Collectors were directed to implement the said decision and inform the government. A copy of the said letter was also sent to the petitioner no. 2 who is the secretary of the petitioner no. 1 federation. Aggrieved by the said letter, the petitioners have challenged issuance of the said letter.

5. Section 31 of the Act confers a power on a

market committee to levy and collect fees in the prescribed manner. Section 34 A of the Act empowers the Market Committees to recover the supervision charges. Learned Assistant Government Pleader did not invite our attention to any provision of the Act or the rules framed under the Act conferring a power on the State Government to stay the recovery of market cess and/or supervision charges in respect of the recovery in accordance with section 31 and under section 34 A of the Act. In any event, no notification was also pointed out to us issued by the government and published in the government gazette granting any stay for recovery. Assuming that there is any power of granting a stay for the recovery, such a power does not appear to have been exercised as the letter itself says pending decision of the government regarding levy of market cess/fees and supervision charges interim direction is issued suspending the recovery of market fee and supervision charges.

6. We note that while admitting the petition on 20th July, 1999 this Court has granted interim stay for the implementation of the impugned letter dated 20th April, 1999. Till today, the impugned letter has not been implemented and the government has not even taken a final decision regarding

grant of any exemption from the recovery of the market fee or supervision charges and no notification has yet been issued granting any exemption from the recovery. we are of the view that the government has no power to grant any interim stay pending any decision under section 59 of the Act, as was sought to be done by an executive order contained in the letter dated 20th April, 1999.

Hence, the Writ Petition is allowed. Rule is made absolute in terms of prayer clause (a).

(D.G. KARNIK, J) **(S.B.MHASE, J)**